

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL CASE NO. 3:19-cv-00709-MR

RICHARD BOLEN,)
Plaintiff,)
vs.)
FNU SMITH, et al.,) ORDER
Defendants.)

THIS MATTER is before the Court on Defendant Philemon's Motion to
Deem Answer Timely Filed [Doc. 32].

This civil rights action was filed by the incarcerated Plaintiff pursuant to 42 U.S.C. § 1983.¹ The Amended Complaint passed initial review on deliberate indifference and negligence claims against Defendant Philemon. [See Doc. 23].

On August 8, 2021, the North Carolina Department of Public Safety (“NCDPS”) filed a service waiver for Defendant Philemon. [Doc. 28]. On October 27, 2021, the Court granted Defendant Philemon an extension of time, until November 30 2021, to answer the Amended Complaint. [Doc. 30].

¹ The Plaintiff filed the action *pro se*, but he is now represented by counsel. [See Doc. 27].

Defendant Philemon filed his Answer and the instant Motion on December 2, 2021. [Docs. 31, 32]. Defendant Philemon explains that his failure to file a timely Answer was due to an administrative oversight and excusable neglect, and the proceedings will not be negatively impacted if the Motion is granted. [Doc. 32 at 2]. Plaintiff's counsel consents to the Motion. [Id. at 3].

A court may extend the time when an act may or must be done, for good cause, on a motion made after the time has expired if the party failed to act because of excusable neglect. Fed. R. Civ. P. 6(b)(1)(B). Excusable neglect requires consideration of equitable factors such as "danger of prejudice ... the length of delay and its potential impact on the judicial proceedings, the reason for the delay, including whether it was in the control of the movant, and whether the movant acted in good faith." Pioneer Inv. Serv. Co. v. Brunswick Assoc., 507 U.S. 380, 395 (1993).

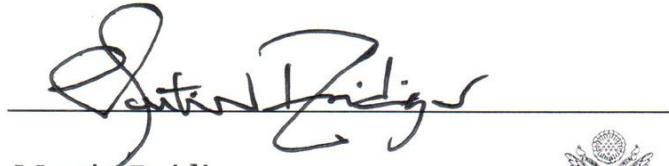
Defendant Philemon's Motion will be granted for good cause shown. Counsel has demonstrated that the failure to timely file an Answer on Defendant Philemon's behalf was an administrative oversight and was not the fault of the Defendant. Further, counsel for the Plaintiff has consented to the Motion and does not allege that any prejudice will result. Further, granting the Motion will not unduly delay these proceedings. Accordingly,

the Motion will be granted, and Defendant Philemon's Answer [Doc. 31] will be accepted as timely filed.

IT IS, THEREFORE, ORDERED that Defendant Philemon's Motion to Deem Answer Timely Filed [Doc. 32] is **GRANTED**.

IT IS SO ORDERED.

Signed: December 6, 2021



Martin Reidinger
Chief United States District Judge

